U.S. Department
of Transportation

United States
Coast Guard

LABOR-MANAGEMENT RELATIONS PROGRAM

COMDTINST M12711.4

U.S. Department of Transportation
United States Coast Guard

Commandant (G-PC-3)
United States Coast Guard

MAILING ADDRESS:
Washington, DC 20593-0001
(202) 267-1704

COMDTINST M12711.4

14 MAY 1990

COMMANDANT INSTRUCTION M12711.4

Subj: Labor-Management Relations Program

1. PURPOSE. This Instruction has the following purposes:

   a. Transmit Department of Transportation Order 3710.4 which governs policies and procedures of the Labor-Management Relations Program in accordance with Title VII, Federal Service Labor-Management Relations of the Civil Service Reform Act (CSRA) of 1978 (5 USC 71).

   b. Transmit Department of Transportation, Departmental Personnel Manual Letter 711-1 which describes policies and procedures for recording and maintaining records of official time granted to employees for representational functions in accordance with the Office of Personnel Management's guidance on the use of official time.

   c. Provide requirements for the selection of management's bargaining team members for negotiating agreements with labor organizations.

2. DIRECTIVE AFFECTED. COMDTINST 12711.1B, 12711.2A, and 12711.3 are cancelled.

3. EFFECTIVE DATE. Provisions of this Instruction are effective upon receipt.

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4. DELEGATION OF AUTHORITY. The authority of the Commandant for labor-management relations in the Coast Guard is delegated to area and district commanders, commanders of maintenance and logistics commands, the Superintendent of the Coast Guard Academy, commanding officers of Headquarters units, and the Chief of Staff in Headquarters, subject to limitations imposed by this Instruction and Commandant Instruction 12240.1 (series).

5. RESPONSIBILITIES. Program responsibilities are assigned as follows:

   a. Commandant (G-P) is responsible for the following, with primary support and operating assistance provided by Commandant (G-PC):

      (1) Monitoring the operation of the program within the Coast Guard;

      (2) Evaluating the program within the Coast Guard and directing such corrective actions and changes in policies and procedures as are deemed necessary in the interest of the Coast Guard;

      (3) Serving as sole contact with the Department of Transportation on all matters being referred in behalf of management to the Federal Labor Relations Authority (FLRA), the Federal Services Impasse Panel (FSIP), and the Merit Systems Protection Board (MSPB);

      (4) Providing Coast Guard policy direction in connection with the impact and implementation of the CSRA of 1978;

      (5) Making available any assistance as may be necessary;

      (6) Interpreting regulations issued by the Commandant; and

      (7) Approving all negotiated, renegotiated, or supplemental agreements.

   b. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of Headquarters units, and the Chief of Staff in Headquarters are responsible for the following:

      (1) Administering the Labor-Management Relations Program within their jurisdictions in keeping with the CSRA of 1978, regulations of outside authority and this Instruction;

5. b. (2) Assuring that management officials and supervisors are trained in labor-management relations, negotiated agreements, and contract administration as required;

(3) Assuring that civilian employees in their respective jurisdictions are apprised of their rights and that no interference, restraint, coercion, or discrimination is practiced to encourage or discourage membership in any labor organization;

(4) Keeping Commandant (G-P) advised of significant problems and the progress of the program;

(5) Periodically evaluating the operation of their labor-management programs;

(6) Designating a management representative as a single point of contact to act upon petitions submitted by labor organizations and to provide for orderliness and continuity in dealings between management and union representatives;

(7) Submitting to Commandant (G-P) all matters to be referred to the Department for approval, coordination, consultation, or information; and

(8) Advising Commandant (G-PC) in all cases when negotiations with a labor organization are anticipated.

c. Managers and supervisors are responsible for those matters indicated in chapter II, paragraph 2, section f, of enclosure (1).

6. MATTERS TO BE REFERRED TO THE DEPARTMENT. Enclosure (1) established numerous coordination/notification requirements. Enclosures (1) to enclosure (3) specifically lists the coordination/notification requirements. All of the data for the Department (notifications, copies, etc.) are to be forwarded to Commandant (G-PC) for appropriate action. Telephone notifications are to be furnished to (G-PC-3) on FTS 267-1704.

7. MANAGEMENT BARGAINING TEAM MEMBERS FOR LABOR NEGOTIATIONS.

a. Due to the increasing complexity surrounding the impact and implementation of the various laws and regulations governing the negotiation and administration of agreements, it has been increasingly clear that a greater expertise is required to assure that the provisions of Chapter 71 of Title 5, U.S.C. are not violated.

7. b. The number of individuals who serve on a management negotiating team will vary according to the particular situation; however, as a general rule the team should be comprised of a minimum of three management officials with one individual designated as the chief negotiator or chairperson. The chief negotiator should be qualified to speak for the commanding officer of the unit. This individual should be well versed in the operations of the unit and should be familiar with civilian personnel regulations. The chief negotiator should also be aware of any problems which have arisen at the unit so they may be brought into the negotiations. A member of the civilian personnel staff who is thoroughly familiar with civilian personnel regulations should be given serious consideration for this position since that individual is frequently the best qualified person available. At a minimum, however, a civilian personnel staff member must serve as a team member.

c. Consideration should also be given to using an attorney and a budget or financial analyst to serve as team members or advisory personnel. Since a negotiated agreement is legally binding, attorneys play an important role in drafting contract language. The financial or budget analyst is important since many provisions of an agreement have monetary implications which need to be assessed accurately. Although each of these individuals can assist without actually being members of the negotiating team, it is felt that they can perform more effectively if they have benefit of the background of all the discussion. Operating officials and high level supervisory personnel may also be appropriate team members. Their knowledge of day-to-day operations (i.e., working conditions, employee dissatisfactions, production requirements, etc.) can be valuable and useful in the negotiating process.

d. Commandant (G-PC) is also available upon request to assist in negotiating agreements with labor organizations.

e. To assure that management negotiators are qualified to represent the interests of management during the negotiations of an agreement, final approval of all members of the negotiating team will be made by Commandant (G-PC). The names of selectees must be forwarded to Commandant (G-PC) as far in advance of negotiations as possible, with the following information on each candidate:

(1) Current grade and position or billet to which presently assigned.

(2) Capacity to which assigned while serving on the negotiating team (i.e., chief negotiator, member, member/technical advisor).

7. e. (3) Brief description of experience in labor management relations including previous negotiating experience and training.

f. At a minimum, members of the negotiating team should have attended the following two courses prior to their participation in negotiations:

(1) Department of Transportation's Management Effectiveness in Labor Management Relations.

(2) Negotiating Labor Agreements course which includes mock negotiations.

8. TRAINING OF SUPERVISORS. In those instances where an agreement has been negotiated with a labor organization, all supervisory personnel who will be supervising employees covered by the agreement, will receive formal training on the provisions of the agreement and their responsibilities in the administration of the agreement. Such training should be completed within sixty (60) days of the effective date of the agreement.

9. TRAINING OF MANAGERS. All second line supervisors and above are responsible for organizations covered by recognition granted to a labor organization and should attend the standardized training course "Management Effectiveness in Labor Management Relations." Attendance in this course is mandatory for all military officers who are responsible for the personnel function at a district or Headquarters unit or an MLC, or who have been selected for such assignments.

10. POLICIES AND PROCEDURES FOR RECORDING OFFICIAL TIME FOR REPRESENTATIONAL FUNCTIONS. The recording of official time used by bargaining unit representatives shall be in accordance with enclosure (2).

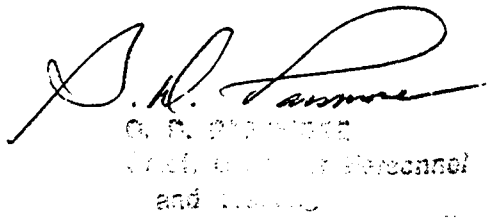
11. SPECIAL ATTENTION. Extreme care must be exercised in reaching agreements with labor organizations. This applies not only to term and mid-term bargaining but in any other dealings where management and the union formally agree to a course of action. If the provisions of such agreements are in conflict with either a Departmental or Commandant policy or issuance, a formal waiver of such policy/issuance must be obtained prior to local agreement. In accordance with 5 USC 7114, formal agreements both term and mid-term must be submitted to Commandant (G-P) for approval. If they contain provision in conflict with law, Government-wide regulations, Departmental or Coast Guard policies or regulations, the parties to the agreement must be notified that the agreement containing those provisions cannot be approved. This notification must be accomplished within 30 calendar days of signing of the agreement by the parties. The short time-frame mandates that all such agreements be submitted immediately, directly by the

11. (cont'd) fastest available means to Commandant (G-PC). Initial notification of such signing should be made by telephone to (G-PC-3) on FTS 267-1704. If the union is not notified of the conflict with Departmental or Coast Guard policies or regulations within the 30 day time period, the provisions of the conflicting policies or regulations are waived. In order to assure that no inadvertent waiver of Departmental or Coast Guard policies or regulations occurs, copies of the following must be submitted to Commandant (G-PC-3):

    a. All documents jointly signed by management and the union; or

    b. Memorandums for the record made by either party making reference to an agreement when a copy of the memorandum for the record is formally distributed to the other party. If such a document is in conflict with law, Government-wide regulations, or Departmental or Coast Guard policies or regulations immediate action will be taken to notify the parties.

12. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of Headquarters units, and the Chief of Staff in Headquarters shall comply with the provisions of this Instruction and its enclosures.



Encl: (1) DOT ORDER 3710.4; Labor-Management Relations Program
(2) DOT DPML 711-1 dtd 10 Nov 1981 w/attachment
(3) DOT Employee Representation Record

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Department of Transportation
Office of the Secretary
Washington, D.C.

ORDER

DOT 3710.4

7-7-80

SUBJECT: LABOR-MANAGEMENT RELATIONS PROGRAM

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1. PURPOSE. This directive contains Department of Transportation (DOT) policies, procedures and other information for conducting the Labor-Management Relations Program in accordance with Title VII, Federal Service Labor-Management Relations, of the Civil Service Reform Act (CSRA) of 1978 (Attachment 1).

2. CANCELLATIONS.

   a. DOT 3710.2 (including change 1), Labor-Management Relations Program, dated 8-9-72.

   b. DOT 3710.1, Labor-Management Relations Policy in the Panama Canal Zone for Department of Transportation Employees, dated 7-19-71.

3. SCOPE.

   a. This Order, DOT 3710, applies to all employees in the Department paid from appropriated and nonappropriated funds, including foreign nationals employed in the United States, but does not apply to members of the uniformed services. (See 5 United States Code (U.S.C.) 7103(a)(2))

   b. Title VII of CSRA and DOT 3710 will not be applied to offices and entities within the agency who have as a primary function intelligence, counter-intelligence, investigative, or national security work where the President has issued an order excluding such offices and entities from coverage of Title VII based on his conclusion that the provisions cannot be applied to these offices or entities in a manner consistent with national security requirements and considerations (Reference f). Similarly, the President may issue an order suspending any provision of Title VII and this Order with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security. (See 5 U.S.C. 7103(b)(1) and (2))

DISTRIBUTION: All Secretarial Offices
All Operating Administrations

OPI: Office of Personnel and Training

4. REFERENCES.

a. CSRA of 1978, Public Law (P.L.) 95-454, dated 10-13-78.

b. Title 5, Code of Federal Regulations (CFR):

(1) Chapter XIV - Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority, and Federal Service Impasses Panel.

(2) Subchapter A - Transition Rules and Regulations, Part 2400.

(3) Subchapter B - General Provisions, Parts 2411, 2412, 2413, 2414 and 2415.

(4) Subchapter C - Federal Labor Relations Authority and General Counsel of the Federal Labor Relations Authority, Parts 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428 and 2429.

(5) Subchapter D - Federal Service Impasses Panel, Part 2470 and 2471.

c. 29 CFR, Chapter XII, Part 1425, Regulations of the Federal Mediation and Conciliation Service (FMCS).

d. 29 CFR, Chapter XI, Regulations of the Assistant Secretary of Labor for Labor-Management Relations, Standards of Conduct for Labor Organizations in the Federal Service.

e. 49 CFR Subtitle A, Office of the Secretary of Transportation, Part 1, Organization and Delegation of Powers and Duties.

f. Executive Order 12171 of 11-19-79, Exclusions from the Federal Labor-Management Relations Program.

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Vertical line denotes change.

CHAPTER I. GENERAL

1. BACKGROUND.

a. The Federal Service Labor-Management Relations Statute governs labor-management relations in the Federal service. The statute was enacted because Congress determined that experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them safeguards the public interest, contributes to the effective conduct of public business and facilitates and encourages the amicable settlement of disputes between employees and their employers involving conditions of employment. Further, Congress determined that the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government. Based on the foregoing, Congress concluded that labor organizations and collective bargaining in the civil service are in the public interest. The Act prescribes certain rights and obligations of the employees of the Federal Government and establishes procedures which are designed to meet the special requirements and needs of the Government. All provisions of the Act should be interpreted in a manner consistent with the requirements of an effective and efficient Government.

b. Nothing contained in the Act precludes:

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees which is entered into before the effective date of the Act (1-11-79); or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of the Act. Within DOT, such units are generally found only in the Federal Railroad Administration (FRA) and the United States Coast Guard (USCG).

c. Policies, regulations and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787 and 11838, or under any other executive order, as in effect on the effective date of the Act, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of the Act or by regulations or decisions issued pursuant to the Act or applicable judicial decisions.

d. The regulations and decisions of the Federal Labor Relations Authority (FLRA) and judicial final decisions are mandatory insofar as program administration is concerned. Regulations of the FLRA, its General Counsel and Federal Service Impasses Panel are controlling with respect to covered issues. The regulations of the FMCS state the conditions and circumstances under which the Service becomes involved in negotiation and other disputes. A working knowledge of applicable decisions and regulations is required for effective labor relations program administration.

2. DEFINITIONS.

a. Words and phrases as defined in the reference documents have the same meanings and applications when used in this document.

b. The following definitions are added or repeated for information purposes:

(1) "Federal Service Labor-Management Relations Statute," "The Act," means Title VII of the CSRA of 1978; P.L. 95-454, dated 10-13-78. Subsequent reference to the Act shall mean the Federal Service Labor-Management Relations Statute.

(2) "Labor Organization" means an organization as defined in 5 U.S.C. 7103(a)(4).

(3) "Unit" means a group of employees found appropriate for purposes of exclusive representation by a labor organization or for the limited purpose of dues deductions under 5 U.S.C. 7115(c).

(4) "National Exclusive" means recognition accorded by an administration headquarters to a labor organization to represent employees in a nation-wide unit.

(5) "Administrator" means the Administrators of the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the Research and Special Programs Administration, the Saint Lawrence Seaway Development Corporation, the National Highway Traffic Safety Administration, the Urban Mass Transportation Administration and the Commandant, United States Coast Guard.

(6) "M-10" means Director, Office of Personnel and Training, Office of the Secretary (OST).

(7) "Management Representative" means an official whose duties and responsibilities include representing a DOT organizational segment, within delegated authority, in its relationships with labor organizations representing or seeking to represent DOT employees.

(8) "Grievance" means any complaint--

(a) by any employee concerning any matter relating to the employment of the employee;

(b) by any labor organization concerning any matter relating to the employment of any employee; or

(c) by any employee, labor organization, or agency concerning--

1 the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

2 any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

(9) "Supervisor" means an individual employed by an agency having authority in the interest of the agency, to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment; except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority.

(10) "Management Official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.

(11) "Conditions of Employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters--

(a) relating to political activities prohibited under Subchapter III of Chapter 73 of title 5;

(b) relating to the classification of any position; or

(c) to the extent such matters are specifically provided for by Federal statute.

(12) "Professional Employee" means an employee as defined in 5 U.S.C. 7103(a)(15).

(13) "Confidential Employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

(14) "Authority" means the FLRA.

(15) "General Counsel" means the General Counsel of the FLRA, except where General Counsel, OST, is identified.

(16) "Panel" means the Federal Service Impasses Panel.

(17) "Service" means the FMCS.

(18) "Primary National Subdivision" means a first-level organizational segment of an agency which has functions national in scope that are implemented in field activities.

3. DELEGATED AUTHORITY. The authority of the Secretary, over and with respect to personnel in DOT, has been delegated to Administrators for the personnel of the administrations (49 CFR §1.45). The Assistant Secretary for Administration has been delegated authority to administer and conduct personnel management activities for OST (49 CFR §1.59). In exercising powers and performing duties delegated or redelegated pursuant to 49 CFR §1.45 and 1.59, officials of DOT are governed by applicable laws, executive orders and regulations and by policies, objectives, plans, standard procedures and limitations issued from time to time by or on behalf of the Secretary (49 CFR §1.42).

CHAPTER II. MANAGEMENT POLICY AND PROGRAM RESPONSIBILITY

1. GENERAL POLICY.

   a. The Department fully supports the Congressional findings and purposes to be served by the Act.

   b. In DOT, management representatives shall deal with recognized labor organizations on conditions of employment (see Chapter I, Paragraph 2b(11), Page 8). All such dealings with labor organizations shall be conducted in a fair and equitable manner directed at the maintenance of constructive relationships and effective and efficient government.

   c. In dealings with recognized labor organizations, management representatives shall seek to understand and arrive at reasonable and amicable settlements of disputes involving conditions of employment. They shall also comply with the requirements of the Act by involving recognized labor organizations in the formulation and/or implementation of conditions of employment affecting unit employees. Where disputes and good faith differences of opinion do arise, it is incumbent on the parties and employees to seek resolution through appropriate procedures established for such purposes in the Act or applicable negotiated agreements.

   d. All agreements and understandings between management and labor organizations shall meet the requirements of 5 U.S.C. 7106 with respect to management rights and shall not conflict with the paramount requirements of the public service. (See Chapter III, Section 3, Page 20)

2. RESPONSIBILITIES. Labor-Management Relations Program responsibilities are assigned as follows:

   a. Deputy Secretary.

      (1) Monitors the operations of the program within the Department.

      (2) Evaluates the program in the Department and directs such corrective actions and changes in policies and procedures as deemed necessary in the interest of the Department.

b. Administrators.

(1) Administer the Labor-Management Relations Program within their jurisdictions in keeping with the Act, regulations and decisions of outside authorities and this Order.

(2) Keep the Deputy Secretary advised of significant problems and the progress of the program.

(3) Forward to M-10 for approval any proposed submissions to the Authority involving:

(a) requests for exceptions to arbitration awards;

(b) negotiability issues (including compelling need);

(c) request for review of an issuance or decision of a Regional Director of the Authority in a representation matter; and

(d) any questions involving general statements of policy and guidance or petitions to amend any regulations of the Authority or the Panel.

(4) Forward to the Assistant Secretary for Administration (M-1) for decision requests for exceptions to Departmental or primary national subdivision policies and regulations.

(5) Obtain approval of M-10 before an administration:

(a) denies a union's request for national consultation rights or terminates such rights;

(b) proposes or agrees with a union(s) request for consolidation of units which includes employees other than the administration in question;

(c) petitions for an election to determine whether a labor organization enjoys support by a majority of employees in a unit;

(d) files an unfair labor practice charge against a labor organization; or

(e) initiates action concerning judicial review under 5 U.S.C. 7123.

(6) Promptly advise M-10 (in writing) of:

(a) requests for Panel assistance in the resolution of negotiation impasses made by a labor organization or the administration;

(b) any request filed with the Authority by an employee(s) or union requesting review of an issuance or decision of a Regional Director in a representation matter;

(c) any indications of strikes, work stoppages, slowdowns, or other activity by employees prohibited by 5 U.S.C. 7116(b)(7) and any picketing of a facility or office (by telephone initially);

(d) any action by the Authority to enforce an order or obtain temporary relief or a restraining order under 5 U.S.C. 7123(b) or (d);

(e) requests for consultation rights on Government-wide rules or regulations;

(f) any action involving the issuance or enforcement of subpoenas requiring the attendance and testimony of witnesses and/or the production of documents or other evidence in a matter before the Authority;

(g) any response to a labor organization request at the level of negotiation for a determination as to the negotiability of a proposal or the compelling need for a Departmental or primary national subdivision regulation;

(h) any labor organization, FMCS or Panel request or recommendation that an impasse issue be submitted to binding arbitration under 5 U.S.C. 7119 (see (a) above); and

(i) a copy of any letter to the Office of Personnel Management (OPM), General Accounting Office, Authority, Panel, or Service requesting guidance or advice on matters related to the Act.

(7) Forward promptly to M-10 as information copies of all:

(a) petitions of recognition (RO) or decertification (DR) (RA), including unit clarification (CU), amendment of unit (AC) petitions, or consolidations (UC);

(b) complaints issued by the General Counsel and decisions by the Authority in unfair labor practice cases, informal or formal settlement agreements, and decisions or certifications in unit consolidations and representation matters, including election results;

(c) arbitration awards including any awards involving impasses under 5 U.S.C. 7119(b)(2) (also furnish copy to OPM, Office of Labor-Management Relations);

(d) labor relations implementing directives issued by administrations;

(e) negotiated agreements and negotiated supplements (3 copies);

(f) Authority or arbitrator awards of attorney fees;

(g) correspondence concerning standards of conduct cases; and

(h) grants of National Consultation Rights (NCR).

(8) Approve or disapprove negotiated agreements within 30 days of execution.

(9) Periodically evaluate the operations of their Labor-Management Relations Programs.

c. General Counsel (OST). The OST General Counsel is the chief legal advisor for the Department and has responsibility for providing legal service and/or assistance on matters arising under the Department's Labor-Management Relations Program. Upon request, the OST General Counsel shall, following coordination with M-10, provide for, or as appropriate, arrange for administration counsel when it is determined that legal representation is required in a hearing or other proceeding under the Act.

d. Assistant Secretary for Administration.

(1) Administers the Labor-Management Relations Program within OST in keeping with the Act, regulations of outside authorities and this directive, including program evaluation for OST. Approves agreements negotiated with labor organizations representing OST employees.

(2) Keeps the Deputy Secretary advised of significant problems and the progress of the program in the Department.

(3) Issues agency determinations on negotiability and compelling need issues under 5 U.S.C. 7117(b) and (c) for the entire Department following a labor organization petition to the Authority.

e. Director, Office of Personnel and Training, OST (M-10).

(1) Serves as the primary Departmental contact with the FLRA, the Federal Service Impasses Panel and the FMCS to take actions listed below on behalf of the Department in connection with labor-management disputes or questions arising within the Department.

(a) Requests the Authority to grant an exception to an arbitration award.

(b) Responds to the Authority concerning any negotiability and compelling need issues referred by a labor organization involving a Departmental office or activity.

(c) Requests reconsideration or clarification of labor-management relations policies, regulations, or decisions of the Authority, Panel or Service.

(d) Submits to the Authority requests for general statements of policy, interpretation or guidance.

(2) Seeks the advice of the OST General Counsel on legal questions arising under the Labor-Management Relations Program.

(3) Provides program advice and assistance to the Deputy Secretary, the Assistant Secretary for Administration and the administrations.

(4) Conducts staff reviews and analyses of matters referred to the agency for coordination and review and makes appropriate recommendations.

(5) Maintains Departmental liaison with the Authority, the Department of Labor and the Office of the Assistant Director for Labor-Management Relations of OPM.

(6) Carries out Departmental obligations under national consultation rights.

f. Supervisors and Other Management Representatives. The establishment of effective labor-management relations is a fundamental responsibility of every supervisor and other management representatives having subordinates subject to the provisions of Federal Service Labor-Management Relations Statute.

CHAPTER III. RIGHTS AND RESPONSIBILITIES OF THE PARTIES

1. EMPLOYEE RIGHTS AND RESPONSIBILITIES.

a. General.

(1) Each employee of the Department has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of this right. Except as otherwise provided in the Act, such right includes the right--

(a) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the Executive Branch of the Government, the Congress, or other appropriate authorities; and

(b) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under the Act.

(2) Paragraph 1a(1)(a) above does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in the Act, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee. In the event a conflict or apparent conflict of interest situation arises, the employee should be provided a reasonable amount of time to correct the situation. A clarification of unit petition may be filed with the Authority in conflict of interest situations where there is a question as to whether the employee should be in the unit.

(3) Employees have the right to solicit membership or support in behalf of or in opposition to labor organizations during non-work time of affected employees. At their work place, employees should be permitted normal freedom for person-to-person communications regarding labor organizations, provided there is no interference with work. Such discussions should not be treated any differently from other discussions among employees which do not create safety hazards or interfere with production or the maintenance of discipline among the workforce.

(4) Employees have the right to distribute literature during non-work time of affected employees and in non-work areas. The right of employees, as distinguished from non-employees, to distribute literature soliciting membership or support for or against labor organizations or to engage in campaign activities is not dependent upon when a labor organization may file a timely challenge to the status of an incumbent labor organization. Management representatives have substantial discretion in deciding what official facilities and services over which it has control will be made available to employees for distribution of literature. In order to maintain neutrality, management representatives should refrain from policing or commenting on the contents of literature being distributed. However, when libelous, scurrilous or inflammatory literature is posted or placed for distribution on the premises, the management representative may require its removal. Management representatives also should avoid evaluating the propriety of literature which allegedly contains derogatory statements or misrepresentations by one labor organization about another. However, when the agency is the target of misrepresentations, management representatives may make or issue statements correcting erroneous information. (See 5 U.S.C. 7116(e)

(5) A negotiated agreement may not require an employee to become or remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary written authorization by a member for the payment of dues through payroll deductions.

b. Representation by Other Than Exclusive Representative. The rights conferred upon a recognized labor organization by the Act do not preclude an employee from being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action or from exercising grievance or appellate rights established by law, rule, or regulation except when the grievance or appeal is covered under a negotiated grievance procedure.

c. Representation During Certain Examinations. The exclusive representative of an appropriate bargaining unit must be given the opportunity to be represented at any examination of an employee in the unit in connection with an investigation if the employee believes it may result in disciplinary actions and the employee requests representation. This right is commonly referred to as a "Weingarten" right based on its similarity to the right involved in a decision of the Supreme Court in NLRB vs. Weingarten (420 U.S. 251, 88 LRRM 2689 (1975).) The Act also requires that each agency inform its employees annually of these rights. Notification for the entire Department is handled by OST in an annual notice (see DOT Notice 3710.6). New employees should be advised of these representation rights during their orientation briefing.

2. LABOR ORGANIZATION RIGHTS AND RESPONSIBILITIES.

a. Labor Organization Rights.

(1) Labor organizations accorded exclusive recognition, have the right to act for and negotiate agreements covering all employees in the unit and are obligated to represent the interests of all employees without discrimination or regard to labor organization membership. Also, labor organizations must be provided an opportunity to be present at formal discussions between one or more agency representatives and one or more unit employees or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment of unit employees.

An exclusive representative also shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of management in connection with an investigation if the employees reasonably believe that the examination may result in discipinary action against him and the employee requests representation. (See Paragraph 1c above)

(2) When a question concerning representation has been raised, management officials shall not discriminate between labor organizations having equivalent status in granting the use of agency facilities and services. Rather, such facilities or services furnished to contending labor organizations in connection with the representation proceeding must be made available on an impartial basis. Any restrictions on the use of agency facilities and services must be uniformly applied to employees and labor organizations alike. Management officials must maintain a neutral position and may neither espouse nor oppose the exercise of rights guaranteed employees or labor organizations by the Act. Where non-employee representatives of a labor organization are permitted to conduct organizing or campaign activities on the premises, identical privileges must be extended to other labor organizations who so request and who have equivalent status.

b. Labor Organization Responsibilities. Labor organizations which request or hold exclusive recognition must comply with the standards of conduct contained in 5 U.S.C. 7120. Questions concerning a labor organization's compliance will be referred to M-10 in connection with OST or to the headquarters labor relations staff in the affected administration.

c. Prohibited Practices. Labor organizations are prohibited from engaging in those practices contained in 5 U.S.C. 7116(b), including calling or participating in a strike, work stoppage, or slowdown or picketing an agency in a labor-management dispute if such picketing interferes with agency operations. Actual or suspected strike, work stoppages, or slowdowns and all picketing will be promptly reported to M-10. Management representatives must secure the prior approval of M-10 before filing an unfair labor practice charge against a labor organization. (See Chapter II, Paragraph 2(b)(6)(c), Page 12)

3. MANAGEMENT RIGHTS AND RESPONSIBILITIES.

a. Management Officials, Supervisors and Confidential Employees. A management official, supervisor, or confidential employee may join a labor organization, but may not participate in the management of the organization or act as its representative except when the participation or activity by management officials and supervisors is pursuant to:

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between a DOT organization and an exclusive representative of its employees entered into before the effective date of the Act (January 11, 1979); or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors which historically or traditionally represent management officials or supervisors in private industry and which held exclusive recognition for units of such officials or supervisors in any agency on the effective date of the Act (January 11, 1979).

b. Management Rights.

(1) Subject to Subparagraph (2) below, nothing in the Act shall affect the authority of any management official--

(a) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(b) in accordance with applicable laws--

1 to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay or take other disciplinary action against such employees;

2 to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

3 with respect to filling positions, to make selections for appointments from among properly ranked and certified candidates for promotion or any other appropriate source; and

4 to take whatever actions may be necessary to carry out the agency mission during emergencies.

(2) Nothing in the Act shall preclude any agency and any labor organization from negotiating--

(a) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work; (See Chapter V, Section 1c, Page 33)

(b) procedures which management officials of the agency will observe in exercising any authority under this Act; or

(c) appropriate arrangements for employees adversely affected by the exercise of any authority under the Act by such management officials.

c. Management Responsibilities.

(1) Comply with the provisions of the Act concerning rights and obligations of management, employees, and labor organizations.

(2) Avoid any interference with the rights of employees to form, join or assist a labor organization or to refrain from such activity, including representation matters.

(3) Represent and uphold the management viewpoint in the administration of agency policy and in the negotiation of agreements and express management's viewpoints in communications with employees and labor organization representatives.

(4) Meet with labor organizations and bargain or engage in such other discussions as may be appropriate under the Act or applicable negotiated agreements, except that such obligations do not include matters covered in Paragraphs b(1) and b(2)(a) above.

(5) Adhere to the requirements of the Act with respect to the unfair labor practices prohibited by 5 U.S.C. 7116(a).

(6) Promptly inform higher level management of significant problems affecting labor-management relations and implementation of the program.

(7) Place authority for the conduct of labor-management relations at the level where it can be used most effectively.

(8) Assign adequate resources and personnel to ensure the availability of labor relations expertise and training.

CHAPTER IV. NATIONAL CONSULTATIONS, REPRESENTATION PROCEEDINGS, AND DUES WITHHOLDINGS

1. GENERAL. Labor organizations granted exclusive recognition or entitled to national consultation rights shall have the rights and obligations extended by the Act. Except in connection with representation proceedings, unfair labor practice complaints and deduction of dues under 5 U.S.C. 7115(c), management representatives will negotiate or consult only with those organizations which have such recognition or rights. Recognition of a labor organization(s) does not preclude all relationships with individual employees (see Chapter III, Paragraph 1b, Page 18, on personal representation) or with religious, social, fraternal, professional and other organizations (see Chapter IX, Dealing with Non-Labor Groups, Page 57).

2. NATIONAL CONSULTATION RIGHTS.

   a. NCR may be accorded at the Departmental or headquarters level of an administration. Requests for NCR at the Departmental level are to be submitted to M-10. Otherwise, requests are to be submitted to the appropriate Administrator. Determinations with respect to primary national subdivisions, eligibility criteria, and according rights are controlled by 5 CFR 2426. Administrators shall notify M-10 when they accord rights within their respective jurisdictions or propose to terminate such rights.

   b. The Assistant Secretary for Administration for DOT and the Administrators of each primary national subdivision will review labor organizations' continued entitlement to NCR on an annual basis. Where it is determined that a labor organization is no longer entitled to such rights, at least 30 days notification will be provided in accordance with 5 CFR 2426.12b(3)(v).

   c. When a labor organization has been accorded NCR, M-10 or Administrators, as appropriate, shall give the designated labor representative:

      (1) reasonable notice of any proposed substantive change in conditions of employment;

(2) reasonable time to present its views or recommendations regarding the change; and

(3) if a labor organization presents any views and recommendations regarding any proposed substantive change in conditions of employment, management will:

(a) consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(b) provide the labor organization a written statement of the reasons for taking the final action.

3. EXCLUSIVE RECOGNITION.

a. GENERAL.

(1) A labor organization that has been accorded exclusive recognition is the exclusive representative of employees in the unit and is entitled to act for, and negotiate collective bargaining agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership.

(2) To establish its eligibility for exclusive recognition, a labor organization must file a petition with the appropriate Regional Director of the Authority. It must also give a copy of the petition together with a statement of its objectives, a roster of its officers and representatives and a copy of its constitution and by-laws to the appropriate management representative.

(3) Administrators are responsible for complying with the posting and other unit determination requirements of the Authority. (See 5 CFR 2422)

(4) Administrations and OST will provide M-10 with a copy of any petitions for exclusive recognition filed by a labor organization, election results, and resulting certifications including situations where an exclusive representative loses recognition (see Chapter II, Paragraph 2b(7), Page 13).

(5) Operating Administrations will promptly notify M-10 of any petition for national exclusive recognition and provide a copy of the petition together with the proposed administration position (see Chapter II, Paragraph 2b(7), Page 13).

(6) When organizations petition for exclusive recognition, management representatives and supervisors must not express preference for any labor organization. Likewise, supervisors and management representatives will not sponsor or assist in the circulation of a decertification petition by individual employees.

(7) Management representatives will not challenge an existing exclusive recognition unless there are good faith doubts, based on objective considerations, that the currently recognized labor organization represents a majority of employees in the existing unit or that because of a substantial change in the organization and scope of the unit, the unit continues to be appropriate. Prior consultation with M-10 is required before any organizational segment of the Department may file a Representative Status (RA) petition with the Authority (see Chapter II, Paragraph 2b(5)(c), Page 11).

b. Appropriate Units.

(1) Management representatives, the petitioning labor organization and any qualified intervenor(s) may stipulate to the appropriateness of a unit for purposes of exclusive recognition. The decision as to whether a unit is appropriate, however, is made by the Authority. The Authority determines in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under the Act, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and determines any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operation of, the agency involved.

(2) A unit will not be determined to be appropriate under the Act solely on the basis of the extent to which employees in the proposed unit have organized, nor will a unit be determined to be appropriate if it includes--

(a) any management official or supervisor, except as provided in 5 U.S.C. 7135(a)(2);

(b) a confidential employee;

(c) an employee engaged in personnel work in other than a purely clerical capacity (generally, a person who makes or participates in decisions or recommendations in matters which are concerned with personnel or training policies and procedures or matters directly affecting the working conditions of employees in the unit is engaged in work of other than a purely clerical capacity);

(d) an employee engaged in administering the provisions of the Act;

(e) both professional employees and other employees, unless the majority of the professional employees vote for inclusion in the unit;

(f) any employee engaged in intelligence, counter-intelligence, investigative, or security work which directly affects national security; or

(g) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(3) Where a unit determination hearing is scheduled a copy of the notice of hearing will be provided to M-10. Following determination of an appropriate unit, a labor organization will be accorded exclusive recognition when it is certified by the Authority as having been selected by a majority of the unit employees voting in a secret ballot election conducted by the agency and supervised by the Authority. An agency may, however, accord exclusive recognition to a labor organization, without an election where the appropriate unit is established through the consolidation of existing exclusively recognized units represented by that organization. (See Section c below)

c. Unit Consolidations.

(1) An agency may accord exclusive recognition to a labor organization without an election, where the appropriate unit is established through the consolidation of existing exclusively recognized units represented by that organization. Where either party or the employees involved request, an election must be held. The Authority determines whether the proposed consolidated unit is appropriate and certifies the labor organization as the exclusive representative. Election, certification and agreement bars do not apply when a labor organization or the agency seeks to consolidate their existing units except where there has been an election for the same unit or subdivision thereof within the preceding 12 months.

(2) The affected Administrator shall be notified of any management proposal to consolidate units or any labor organization request to consolidate units within an administration. M-10 shall be notified of a proposal to consolidate units across organization lines, i.e., where employees of the proposed consolidated unit are not wholly within OST or an administration.

(3) Upon certification of consolidation of units, terms and conditions of existing agreements covering those units shall remain in effect, except as agreed to by the parties, until a new agreement for the consolidated unit becomes effective. The timing and procedures for negotiation of an agreement for a consolidated unit are for determination by the parties. (See 5 CFR 2422.2(h)(8))

4. ELECTIONS.

a. Management representatives will cooperate with the Regional Director of the Authority in conducting elections to determine whether a labor organization shall become or remain the exclusive representative of a unit or whether existing units shall be consolidated. (See 5 U.S.C. 7111(f)(3) and 5 CFR 2422.3 concerning timeliness of petitions) Resources of the Department shall be made available as required for the proper and efficient conduct of the election. (See 5 U.S.C. 7111(d) and 5 CFR 2422.17)

b. If, as a result of an objection, a Regional Director issues a notice of hearing, a copy of the notice shall be forwarded by the management representative directly to the appropriate Administrator. A copy of the decision of the Administrative Law Judge (ALJ) shall be furnished promptly to the appropriate Administrator and M-10.

c. When the Regional Director, after considering an objection or challenged ballots, determines that no relevant question of fact exists and accordingly issues a report and findings, a copy of the latter must be furnished promptly to the appropriate Administrator and M-10.

d. If a Regional Director determines that no relevant question of fact exists but that a substantial question of interpretation or policy exists and accordingly transfers the case to the Authority, a copy of his Report and Findings to this effect must be furnished promptly to the Administrator. A representative of the administration will, in turn, immediately notify M-10 by telephone. Timely notification is important because the Authority only allows 25 days for the filing of briefs and/or requests for review of the Regional Director's action (5 CFR 2429.1(a)).

5. DUES WITHHOLDING.

a. Exclusive Units.

(1) When authorized by appropriate written assignment, management is required to deduct from the pay of an employee in an exclusive unit an allotment to a labor organization for dues which are required to maintain membership in the organization. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided in Subparagraph (2) below, any such assignments may not be revoked for a period of 1 year.

(2) An allotment made under Section (1) above shall terminate when:

(a) the agreement between the agency and the exclusive representative ceases to be applicable to the employee;

(b) the employee is suspended or expelled from membership in the exclusive representative; or

(c) the employee revokes the allotment in accordance with applicable arrangements between the parties.

b. No Exclusive Unit.

(1) A labor organization may petition the Authority alleging that 10 percent of the employees in an appropriate unit have membership in the organization. Upon certification by the Authority of the validity of the petition, management has an obligation, if requested to do so by the labor organization, to negotiate with the labor organization solely concerning the deduction of dues from the pay of members who are employees in the unit and who made a voluntary allotment for such purpose.

(2) (a) The provisions of Paragraph (1) above do not apply in any instances where there is an exclusive representative of the employees involved.

(b) Any agreement negotiated pursuant to Paragraph b(1) above with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

c. Dues Withholding Agreements.

(1) While not required by the Act, the parties may decide to formalize dues withholding arrangements by including them as part of a basic negotiated agreement or in a separate memorandum of understanding. Such dues withholding arrangements may not conflict with the applicable requirements of 5 U.S.C. 7115.

(2) To avoid subsequent administrative problems, negotiated dues withholding arrangements should indicate how often a change may be made in the amount of the dues allotment and identify the annual date or such other intervals as may have been continued after the effective date of the Act with respect to revocation of dues allotments. In this regard the Authority has determined that the 1-year period for revocation of dues assignments contained in Section 7115(a) of the Act does not apply in those situations where the parties to an existing collective bargaining agreement have mutually agreed to renew or continue the 6-month intervals for the revocation of dues assignments. However, the 1-year period applies where either the agency or the union objects to continuation or renewal of existing lesser intervals. In such instances, the 1-year period begins to run from either of the following dates, whichever is later (see DOT Notice 3710.5 of 8-16-79):

(a) the ending date of the last 6-month interval when the dues allotment could have been revoked; or

(b) the date on which the employee authorized the dues allotment.

(3) In order to clearly establish the responsibilities of the parties and to facilitate dues allotments, the parties also may wish to cover the following matters:

(a) filing of the dues withholding authorization shall be a voluntary action by the employee;

(b) the amount of the allotment for dues;

(c) a requirement for prompt notification of the agency by the labor organization of an employee's notification of revocation of the allotment or ineligibility to continue an allotment;

(d) the title and address of the labor organization official who is to receive the remittance and the remittance listing;

(e) the information to be provided in the remittance listing;

(f) the procedures for adjustments of errors in the amount of the remittance;

(g) the effective date of allotments; and

(h) the frequency with which the labor organization will be permitted to change the amount of the dues to be deducted.

(4) Charge to Labor Organization. Dues allotments from employees in exclusive units shall be made at no cost to the recognized labor organization. However, the amount of the fee to be charged a labor organization for such withholding service under the 10 percent membership provision (see b(1) above) is negotiable.

CHAPTER V. NEGOTIATIONS AND AGREEMENTS

1. GENERAL.

a. When a labor organization has been accorded exclusive recognition, representatives of management and the labor organization are required to meet at reasonable times and bargain in good faith. This obligation comprehends that the parties will:

(1) approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative upon request and, to the extent not prohibited by law, data:

(a) which is normally maintained by the agency in the regular course of business;

(b) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(c) which does not constitute guidance, advice, counsel or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, execute on the request of any party to the negotiation a written document embodying the agreed terms and take such steps as are necessary to implement the agreement.

b. (1) The duty to bargain extends to personnel policies, practices, and matters affecting working conditions unless such policies, practices and matters:

(a) relate to political activities prohibited under Subchapter III of Chapter 73, 5 U.S.C.;

(b) relate to the classification of any position;

(c) are specifically provided by Federal statute;

(d) are inconsistent with any Federal law or regulation;

(e) are subject to a Government-wide rule or regulation; and

(f) are inconsistent with applicable Departmental or primary national subdivision rules or regulations except where the Authority has determined that no compelling need exists for such agency rules or regulations. (See 5 CFR 2424.11)

(2) Subparagraph (f) above applies to any rule or regulation issued by the Department or issued by any primary national subdivision of the Department, unless a labor organization represents an appropriate unit including not less than a majority of the employees in the Department or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

c. Except as provided in Section 4 below, the obligation to bargain does not extend to those matters covered in Chapter III, Section 3b, "Management Rights," Page 20. Before negotiating on any labor organization proposals dealing with those matters covered in 5 U.S.C. 7106(b)(1), the so-called "permissive" areas of bargaining, management representatives should give careful attention to the impact of such proposals on the efficiency and effectiveness of agency operations. Where it is determined that identifiable adverse impacts are not balanced by corresponding benefit to the organization, management representatives should not agree to such proposals. Prior to agreeing to any labor organization proposals dealing with the methods and means by which agency operations are to be conducted, management representatives should consult with their headquarters labor relations office. (See 5 U.S.C. 7106)

d. 29 CFR 1425 contains the regulations of the FMCS issued to fulfill its responsibilities under 5 U.S.C. 7119 to provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation impasses (see Section 5 below). The exclusive representative and the agency may determine appropriate techniques, consistent with the provision of 5 U.S.C. 7119, to assist in any negotiation.

2. NEGOTIATIONS AND OFFICIAL TIME. The time, place and other arrangements for negotiations are matters to be determined by the parties concerned or controlled by applicable provisions of existing negotiated agreements. Management representatives have an obligation to provide exclusively recognized labor organizations with reasonable notice and an opportunity to request to bargain on personnel policies, practices and matters affecting working conditions absent a clear and unmistakable waiver of the right to bargain. This obligation exists with respect to situations where there is no basic agreement and during the term of an existing agreement, including the exercise of procedures and adverse impact negotiations cited in Section 4 below. Employees in the unit representing a labor organization in negotiations shall be authorized official time for such purposes, including attendance at impasse proceedings during the time the employee(s) would otherwise be in a duty status. The number of employees granted official time shall not exceed the number of individuals designated as management negotiators. (See Chapter VII) Employees participating for or on behalf of a labor organization in proceedings before the Authority are entitled to official time, travel, and per diem in accordance with 5 CFR 2429.13-14.

3. SUBSEQUENTLY ISSUED RULES AND REGULATIONS. It is an unfair labor practice under 5 U.S.C. 7116(a)(7) for management to enforce any Government-wide or agency rule or regulation (other than a rule or regulation implementing Section 2302 of the Act concerning prohibited personnel practices) which is in conflict with any applicable negotiated agreement if the agreement was in effect before the date the rule or regulation was prescribed. Agreements shall be brought into conformance with such Government-wide and applicable Departmental or primary national subdivision rules and regulations at the time the agreement is renewed, extended, or renegotiated.

Vertical line denotes change.

4. PROCEDURES AND IMPACT NEGOTIATIONS. 5 U.S.C. 7106(b)(2) and (b)(3) require notification to a labor organization and an opportunity to request negotiations on the procedures to be used in exercising management's rights and on appropriate arrangements for employees adversely affected by the exercise of such rights.

5. RESOLVING NEGOTIATION IMPASSES.

   a. While the obligation to bargain does not compel either party to agree to a given proposal or make a concession thereon, the object of the bargaining process is, to the maximum extent possible, to resolve all negotiation impasses through voluntary means short of imposed settlements. Available resources within the Department and administrations for settlement of disputes will be used before management representatives refer disputes outside the agency for assistance.

   b. The FMCS provides assistance to agencies and labor organizations in the resolution of negotiation impasses. The Service determines under what circumstances and in what manner it shall provide services and assistance (see 29 CFR 1425).

   c. If voluntary arrangements, including the assistance of the Service or any other third-party mediation, fail to resolve a negotiation impasse, either party may request the Panel to consider the matter, or the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel. (See 5 CFR 2471.3(b) and 6(b)) Except where provided in a negotiated agreement, management, at any organizational level, will not jointly or independently file a request for resolution of a negotiation impasse with the Panel or request approval of a binding arbitration procedure without prior approval of M-1 for OST or the appropriate Administrator of the affected administration. Administrators will be notified promptly by their subordinate officials of union requests that the Panel consider a negotiation impasse. Administration officials will, in turn, advise M-10 when an impasse is referred to the Panel. (See Chapter II, Paragraph 2b(6)(h), Page 12)

   d. It is an unfair labor practice for either an agency or labor organization to fail or refuse to cooperate in impasse procedures and impasse decisions as required by the Act. (See 5 U.S.C. 7116(a)(6) and (b)(6))

e. If the parties are unable to reach a settlement with assistance from the Panel, the Panel is empowered to take whatever action is necessary to resolve the impasse. Such final action shall be binding on the parties for the term of an agreement unless the parties agree otherwise.

6. NEGOTIABILITY ISSUES.

a. Where representatives of OST or an administration involved in negotiations allege that the duty to bargain in good faith does not extend to any matter because the proposal(s) is inconsistent with law, rule or regulation, or does not involve a personnel policy, practice, or matter affecting working conditions, the exclusive representative may appeal the allegation to the Authority when--

(1) it disagrees with the agency's allegation that the matter, as proposed to be bargained, is inconsistent with any Federal law or any Government-wide rule or regulation, or is not otherwise subject to the obligation to bargain; or

(2) it believes, with regard to any agency rule or regulation asserted by the agency as a bar to negotiations on the matter, as proposed, that:

(a) the rule or regulation violates applicable law, or rule or regulation of appropriate authority outside the agency;

(b) the rule or regulation was not issued by the agency or any primary national subdivision of the agency, or otherwise is not applicable to bar negotiations with the exclusive representative under 5 U.S.C. 7117(a)(3); or

(c) no compelling need exists for the rule or regulation to bar negotiations on the matter, as proposed, because the rule or regulation does not meet the illustrative criteria for determining compelling need for agency rules and regulations as set forth in 5 CFR 2424.11.

b. Prior to filing an appeal with the Authority, the labor organization must request in writing that OST or the administration representative involved in the negotiations provide a written determination as to the negotiability of the proposal(s). The management representative is required to provide a written determination to the labor organization within 10 days of receipt of the request. The labor organization must file a timely appeal with the Authority within 15 days of receipt of the management position and serve a copy of the appeal on the Secretary or M-10. Furnishing a copy of the labor organization petition to M-10 will meet the requirements of 5 U.S.C. 7117(c)(2) and 29 CFR 2424.4(b) and minimize delays in processing such appeals. Where the management representative fails to respond within 10 days of the labor organization request, the labor organization may appeal to the Authority without having received the management position on the proposal(s).

c. The Department has 30 days from the receipt of its copy of the labor organization's appeal to file a statement with the Authority either withdrawing the prior management contention of non-negotiability or supporting its position. The labor organization then has 15 days after receipt of the Department's position to file its response with the Authority.

d. All agency responses to the Authority involving negotiability issues within the Department, including those involving compelling need, will be made by M-1.

(1) To minimize situations where local management's initial determination on non-negotiability are modified or reversed during the Department's response to the Authority, management negotiators should try to anticipate negotiability disputes which may arise. While the labor organization controls the timing of requests for management decisions, management representatives will often be aware of potential disputes prior to a written request for a decision. In these situations, management representatives should coordinate the position they intend to take with the appropriate headquarters labor relations staff. The latter should coordinate the matter with the OST Labor Relations Staff (M-17), where it appears that a negotiability dispute may arise.

(2) In situations where a written request is received prior to the coordination suggested above, management negotiators must attempt to obtain telephone coordination with their headquarter's labor relations staffs prior to a written decision to the union within the allotted 10 days.

(3) Copies of all written negotiability determinations together with a full description of the disputed proposals(s) will be forwarded immediately to the appropriate headquarters labor relations staff who will, in turn, notify M-17.

f. Where a labor organization files an unfair labor practice charge which involves a negotiability issue and also files a petition for review of the same negotiability issue, the Authority and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Rather, the labor organization must select the procedure which it desires followed. The Authority will then ordinarily suspend action on the other case. The labor organization must notify the Authority in writing of its selection or procedure and serve copies on the appropriate Regional Director and all parties to both the unfair labor practice and negotiability cases. Where the negotiability dispute arises during the course of negotiation of a basic contract (as distinguished from negotiations involving an actual or contemplated change in conditions of employment) the labor organization may only pursue the matter through the negotiability procedures of the Authority (see 5 CFR 2424.5).

7. WRITTEN AGREEMENTS.

a. General.

(1) Where management representatives and the labor organization reach agreement on personnel policy, practices and matters affecting working conditions and either party requests it, they will execute a written document embodying the agreed upon terms and take steps as are necessary to implement the agreement.

(2) Local agreements may be negotiated on the basis of national exclusive recognition where the national agreement so provides and such negotiations shall be subject to the provisions of the national agreement.

(3) Copies of negotiated agreements will be provided to management officials responsible for their administration and should be made readily accessible to unit employees.

b. Contents.

(1) Each written agreement shall provide procedures applicable only to employees in the unit, for settlement of grievances, including questions of arbitrability. (See Chapter VI) Additionally, each agreement as a minimum shall contain:

(a) a statement identifying the parties to the agreement;

(b) a description of the specific unit to which the agreement applies; and

(c) a statement specifying the effective date of the agreement, its duration, and the conditions of reopening and terminating it. Agreements which go into effect automatically following the 30-day period in 5 U.S.C. 7114(c)(3) and which do not contain the effective date of the agreement, will not constitute a bar to an election petition. (See 5 CFR 2422.3(i))

c. Approval.

(1) The Assistant Secretary for Administration for OST and the Administrators are delegated authority under 5 U.S.C. 7114(c)(3) to approve agreements negotiated within their respective jurisdictions. The Authority delegated is in conformity with the delegation in 49 CFR §1.45.

(2) The Assistant Secretary for Administration for OST and the administrations shall establish procedures to ensure that negotiated agreements are promptly forwarded for approval following execution by the parties. An agreement shall be approved within 30 days from the date it is executed if the agreement is in accordance with the provisions of the Act and any other applicable law, rule, or regulation (unless an exception has been granted). An agreement which has not been approved or disapproved within 30 days from the date of execution shall take effect without the required approval and shall be binding on the parties subject to the provisions of applicable law, rule or regulation. (See Section 7b(1)(c) above regarding failure to cite the effective date of such an agreement)

(3) Three copies of each approved agreement shall be submitted to M-17. Additionally, two copies of each approved agreement shall be submitted to the Assistant Director for Labor Management Relations of OPM, 1900 E. Street, N.W., Washington, D.C. 20415.

CHAPTER VI. GRIEVANCE AND ARBITRATION PROCEDURES

1. REQUIREMENTS. All negotiated agreements must contain procedures for the settlement of grievances, including questions of arbitrability. Except as provided below, the negotiated grievance procedure shall be the exclusive procedure for resolving grievances which fall within its coverage. Grievance procedures negotiated by the parties shall:

   (a) be fair and simple;

   (b) provide for expeditious processing; and

   (c) include procedures that--

      (1) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit, to present and process grievances;

      (2) assure an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

      (3) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

2. SCOPE AND COVERAGE.

   a. The term "grievance" (see Chapter I, Paragraph 2b(8), Page 7) is defined by 5 U.S.C. 7103(a)(9) to provide for the broadest possible scope and coverage of the negotiated grievance procedure and includes such matters as reduction-in-force, denial of within-grade increase, Fair Labor Standards Act issues, and suspensions of 14 days or less. However, the parties may limit the scope of the grievance procedure by agreeing to exclude certain matters from its coverage. In addition, 5 U.S.C. 7121(c) provides that grievances concerning the following matters must be excluded from coverage of negotiated grievance procedures:

      (1) any claimed violation of Subchapter III of Chapter 73, title 5, U.S.C., relating to prohibited political activities;

(2) retirement, life insurance, or health insurance;

(3) a suspension or removal for national security reasons under section 7532 of title 5, U.S.C.;

(4) any examination, certification or appointment; or

(5) classification of any position which does not result in the reduction in grade or pay of an employee.

b. The following matters, while covered by statutory appeals procedures, are also included under coverage of the negotiated grievance procedure unless the parties otherwise agree:

(1) discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status or political affiliation; (See 5 U.S.C. 2302(b)(1))

(2) removals and reductions in grade for unsatisfactory performance; (See 5 U.S.C. 4303) and

(3) removals, suspensions for more than 14 days, reductions in grade or pay, and furloughs for 30 days or less. (See 5 U.S.C. 7512)

c. Where the matters noted in Paragraph b above are covered by a negotiated grievance procedure, an employee has the option of using the statutory procedure or the negotiated procedure but not both. The option is exercised when the employee initiates a timely appeal under the applicable statutory procedure or files a timely grievance in writing, in accordance with the provisions of the negotiated procedure, whichever event occurs first.

d. In cases involving discrimination complaints (Subparagraph b(1) above), selection of the negotiated procedure does not prevent the aggrieved employee from:

(1) requesting the Merit Systems Protection Board (MSPB) to review a final decision under 5 U.S.C. 7702 in the case of any personnel actions that could have been appealed to MSPB; or where applicable,

(2) requesting the Equal Employment Opportunity Commission (EEOC) to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the EEOC.

e. With the exception of those matters noted in Subparagraphs b(2) and b(3) above, issues which can be raised under a negotiated grievance procedure and which also involve a possible unfair labor practice, may be raised under either the negotiated grievance procedure or the Authority's procedures for resolving unfair labor practices (see 5 CFR 2423), but not under both, and the choice is irrevocable.

f. In order to avoid confusion among unit employees as to available grievance and appeal procedures, the parties should clearly define the scope of the negotiated grievance procedure by specifically listing matters included or excluded from its coverage, including those listed in Subparagraph 2(a) above.

3. ARBITRATION.

a. Arbitration may only be invoked by the labor organization or the agency. Such matters as the method of selecting an arbitrator, the sharing of the costs of arbitration, including the arbitrator's fee and transcripts, witnesses, entitlement to official time, etc., are matters for negotiation by the parties.

b. All questions concerning the arbitrability of a grievance will be decided by the arbitrator unless provided otherwise in the negotiated agreement.

c. When an employee selects the negotiated grievance procedure in lieu of the statutory appeals procedure to contest actions under Subparagraphs b(2) and b(3) above, and the matter is referred to arbitration, the arbitrator is bound by the standards of proof contained in 5 U.S.C. 7701(c)(1), which requires that:

(1) in the case of unacceptable performance, the action is supported by substantial evidence; and

(2) in any other case, the action is supported by a preponderance of the evidence.

d. Back Pay and Attorney Fees.

(1) An arbitrator may award back pay as provided in 5 U.S.C. 5596 which covers decisions relating to grievances and unfair labor practices. Where an arbitrator's finding that an employee was affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction in all or part of the pay, allowances, or differentials is adopted, the employee is entitled to:

(a) correction of the personnel action; and

(b) to receive an amount equal to all or any part of the pay allowances or differentials, as applicable, which the employee normally would have earned or received during the period had the personnel action not occurred, less any amounts earned by the employee through other employment during the period.

(2) A "personnel action" is defined to include the omission or failure to take an action or confer a benefit such as the denial of an overtime assignment under a non-discretionary provision of a negotiated agreement.

(3) An arbitrator also may award reasonable attorney fees where back pay is provided and there is a determination that payment of such fees is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit. In the case of a finding of discrimination covered by Subparagraph b(1) above, the payment of attorney fees shall be in accordance with the Civil Rights Act of 1964.

(4) When an arbitrator's award requires an administration of the Department to pay attorney fees, the affected management representatives will immediately coordinate the matter with their headquarters labor relations officer so that a determination may be made as to the appropriateness of the award or initiation of any appeal that may be required.

e. Exceptions to Arbitration Awards.

(1) Either party may file an exception to an arbitration award with the Authority (5 CFR 2425). The exception must be filed within 30 calendar days of the date of the award. Where timely exceptions are filed, the Authority will review an arbitration award to determine if the award is deficient on extremely limited grounds. An award will be modified or set aside only where the award is shown to be:

(a) contrary to any law, rule or regulation; or

(b) on other grounds similar to those applied by Federal courts in private sector labor-management relations.

(2) The Authority will not consider exceptions to any award relating to:

(a) an action based on acceptable performance covered under 5 U.S.C. 4303;

(b) a removal, suspension for more than 14 days, reduction in grade, reduction in pay, or furlough of 30 days or less covered under 5 U.S.C. 7512; or

(c) matters similar to those covered under 5 U.S.C. 4303 and 7512 which arise under other personnel systems. Such awards are subject to judicial review. (See Subparagraph g below)

(3) If an exception is not filed within 30 days of the date of the award, the award becomes final and binding. This time limit may not be extended. In view of this short time frame, a management representative who believes that an exception is appropriate, should communicate immediately with the headquarters labor relations staff. The proposed exception along with all supporting documents and a letter of transmittal to the Authority should be submitted to M-10 no later than 25 days from the date of the award. Likewise, if a labor organization files an exception, the proposed agency position in opposition to the exception and all available information relating to the award should be submitted to M-10 no later than 25 days from the date of service of the labor organization's exception(s).

f. Discrimination Issues. An employee who elects to use the negotiated grievance procedure and alleges discrimination in connection with a matter appealable to the MSPB (a so-called "mixed case") or the EEOC, may seek review of a final decision under the negotiated grievance procedure by the MSPB or EEOC, as appropriate. (See 5 U.S.C. 7121(d))

g. Judicial Review.

(1) Decisions of the Authority on exceptions to arbitration awards are not subject to judicial review unless the award involves an unfair labor practice. Any person aggrieved by a final order of the Authority concerning exceptions to an arbitration award involving an unfair labor practice may seek judicial review in the appropriate circuit of the Unites States Court of Appeals within 60 days of the Authority's decision.

(2) Where an arbitration award involves an action cited in Subparagraphs 2(b)(2) and 2(b)(3) above, only the grievant or OPM and not the agency may request judicial review. A petition for review must be filed in the United States Court of Claims or the appropriate United States Court of Appeals within 30 days of receipt of notice of the final decision of the arbitrator. Prompt notification of the headquarters labor relations office of the administration involved and M-10 is essential for communication with OPM seeking their support for judicial review.

CHAPTER VII. STATUS OF EMPLOYEES REPRESENTING LABOR ORGANIZATIONS AND USE OF GOVERNMENT FACILITIES

1. OFFICIAL TIME.

   a. Official time may not be granted to employees serving as labor organization representatives in connection with any activities performed relating to the internal business of a labor organization. Such activities as solicitation of membership, distribution of literature, campaigning for and elections of labor organization officials, and solicitation or collection of dues must be performed during the time the employee(s) involved is in a nonduty status. In addition, official time should not be granted employees for such activities as attending labor organization meetings, conferences and training sessions except as provided in Paragraph e below.

   b. The granting of official time to employees in appropriate units for the purpose of representing a labor organization for all other labor relations matters covered by the Act is a matter for negotiation between the parties. The amount of time agreed to by the parties shall be reasonable, necessary and in the public interest (see 5 U.S.C. 7131(d)).

   c. In proceedings before the Authority, the Authority determines whether any employee participating for, or on behalf of, a labor organization is authorized official time and travel and per diem for such purposes during the time the employee otherwise would be in work or paid leave status. (See 5 CFR 2429.13)

Vertical line denotes change.

d. Employees who are labor organization representatives may be granted official time to attend union-conducted training sessions where the subject matter is of mutual concern to management as well as the employee in the capacity of a labor organization representative and the management interest will be served by attendance at the training. The training, for example, may involve such matters as statutory and regulatory provisions relating to pay, working conditions, work schedules, employee appeal procedures as well as agency policies and the provisions of negotiated agreements. Where the mutual benefit test is met, official time may be granted for short periods of time—ordinarily not to exceed 8 hours per person each year—that are reasonable under the circumstances.

e. DOT Order 3720.1, Policies and Procedures for Recording Official Time for Representational Functions, contains further policies and procedures for recording official time granted employee representatives for performing any representational functions.

2. LEAVE FOR REPRESENTATIVES. When the work situation permits, annual leave or leave without pay may be granted to an employee to perform the duties and responsibilities associated with labor organization business for which official time has not been negotiated or authorized. The amount of leave and the time at which it is to be granted for these purposes must be compatible with the employee's official work situation. Leave without pay may be granted to employees to serve as full-time labor organization representatives provided they may be spared from their positions for the amount of time involved and further that absences in such capacity are in the interest of the Government.

3. USE OF GOVERNMENT FACILITIES.

a. Management has considerable discretion in deciding what facilities and services under its control will be made available for use by employees serving as labor organization representatives. Where there is an exclusive representative, the use of such facilities and services by the labor organization is a matter for negotiation between the parties. Before permitting the use of agency facilities and services, management should consider the following:

(1) the granting of permission to a labor organization for use of agency facilities and services would be in accordance with existing law and regulation;

(2) the facilities and services requested are necessary to the labor organization for appropriate labor-management purposes;

(3) where there is an exclusive representative, other labor organizations should not be granted use of facilities and services unless such use is granted under the "equivalent status" doctrine (see Chapter III, Paragraph 2a, Page 19);

(4) reasonable conditions for use of the facilities and services are established and agreed to by the labor organization; and

(5) benefits will accrue to management by virtue of improved labor-management relations.

CHAPTER VIII. UNFAIR LABOR PRACTICES

1. GENERAL.

   a. 5 U.S.C. 7116(a), (b) and (c) of the Act set forth those actions which constitute unfair labor practices for an agency or a labor organization. An agency or labor organization determined by the Authority to have engaged in prohibited action(s) is subject to the sanctions listed in Section 5 below.

   b. The General Counsel of the Authority has the responsibility of investigating and processing unfair labor practice charges and issuing a complaint where appropriate. 5 U.S.C. 7118, however, expressly prohibits the issuance of a complaint based on an alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority unless the General Counsel determines that the complainant was prevented from filing the charge because the agency or labor organization against whom the charge is made failed to perform a duty owed to the complainant, or due to concealment. In such instances, the 6 month period within which a charge may be filed is computed from the day of discovery of the occurrence.

   c. It is the policy of the Authority and the General Counsel to encourage the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the issuance of a complaint by the Regional Director. Management representatives should cooperate fully with Authority representatives in attempting to reach an informal settlement of unfair labor practice charges which is fair and equitable to the parties concerned. Before any settlements are agreed to, however, the headquarters labor relations office of the administration involved should be consulted on the matter. Copies of formal or informal settlements should be provided to M-10. (See Chapter II, Paragraph 2b(7)(b), Page 13)

   d. Management representatives will not file unfair labor practice charges against labor organizations without prior coordination with their headquarters office and clearance from M-10. (See Chapter II, Paragraph 2b(5)(d), Page 12)

2. APPEALABLE ACTIONS. Issues which can be raised under statutory appeals procedures may not be raised as unfair labor practices. This includes adverse actions under 5 U.S.C. 7512 or demotions or removals based on unacceptable performance under 5 U.S.C. 4303, where an employee has the option of using the negotiated grievance procedure or the statutory appeal procedure. However, other matters which can be raised under a grievance procedure may, at the discretion of the aggrieved party, be raised under the negotiated grievance procedure or under the unfair labor practice procedure, but not both. (See 5 U.S.C. 7116(d))

3. PROCESSING.

   a. A charge that an activity, agency or labor organization has engaged in any action prohibited by 5 U.S.C. 7116 may be filed by any person, i.e., management, labor organization or an employee. After investigating the charge and attempting an informal settlement, the Regional Director determines whether to issue a complaint or dismiss the charge, subject to an appeal to the General Counsel. The decision of the General Counsel in such matters is final.

   b. Failure to file an answer or to plead specifically to or explain any allegation will be considered by the Authority as constituting an admission of such allegation unless good cause to the contrary is shown.

   c. If after investigation, the Regional Director determines that formal proceedings should be instituted, a formal complaint is issued. This determination by the Regional Director is not subject to review. A copy of any complaint issued by the Authority involving any administration of DOT shall be furnished promptly to the headquarters labor relations office and M-10, followed by a copy of the proposed response to the Authority.

d. Where a complaint is not resolved, a hearing is held before an ALJ. The parties have the right to appear in person, by counsel or other representative and to examine and cross-examine witnesses, to introduce into the record documentary or other relevant evidence, and to submit rebuttal evidence. The General Counsel has the responsibility of presenting the evidence in support of the complaint and the burden of proving the allegations of the complaint by a preponderance of the evidence. Post-hearing briefs are filed with the ALJ within such reasonable period following the close of the hearing as may be determined by the ALJ.

e. The decision of the ALJ containing conclusions as to the disposition of the case, appropriate remedial action, and notices to be posted is served on all parties to the proceeding when the case is transferred to the Authority. Any exceptions to the ALJ decision must be filed with the Authority within 25 days after service of the decision. Since the Authority may adopt the ALJ decision without discussion in the absence of timely exceptions, the filing of such exception is critical where management disagrees with the ALJ conclusions and decision. In view of the short time frame for filing exceptions, the headquarters labor relations office of the administration involved should be informed by telephone of the ALJ decision by the management representatives handling the case. The administration labor relations office will then in turn notify M-10 of the decision and assure that a copy is furnished promptly. After considering the ALJ decision, the record, and any exceptions and related submissions filed, the Authority will issue its decision affirming or reversing the ALJ in whole or in part, or making such other disposition of the matter as it deems appropriate. A copy of any decision of the Authority involving any administration of the Department shall be furnished promptly to the headquarters labor relations office and to M-10.

4. COMMUNICATIONS WITH EMPLOYEES. 5 U.S.C. 7116(e) provides that the expression of any personal view, argument, opinion or the making of any statement by a management representative which--

a. publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election;

b. corrects the record with respect to any false or misleading statement made by any person; or

c. informs employees of the Government's policy relating to labor-management relations and representation,

shall not constitute an unfair labor practice or be grounds for setting aside a representation election if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions.

5. REMEDIES.

a. Where the Authority determines that the agency or labor organization has engaged in an unfair labor practice, it may issue an order requiring the agency or labor organization to:

(1) cease and desist from any such unfair labor practice;

(2) renegotiate a collective bargaining agreement in accordance with the Authority's order and require that the agreement, as amended, be given retroactive effect;

(3) reinstate an employee with the back pay in accordance with 5 U.S.C. 5596 (see 5 U.S.C. 7118(a)(7); or

(4) include any combination of the actions described in Subparagraphs (1) through (3) above or such other action as will carry out the purpose of the Act.

b. In addition, 5 U.S.C. 7120(f) gives the Authority special remedial authority with regard to enforcing prohibitions on strikes. The Authority may, upon a finding that a union has intentionally violated 5 U.S.C. 7116(b)(7) with regard to any strike, work stoppage or slowdown:

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

6. ENFORCEMENT.

   a. The Authority may petition any appropriate United States Court of Appeals for the enforcement of its orders, including those in unfair labor practice cases, and for appropriate temporary relief or restraining order.

   b. The Authority may seek temporary relief or a restraining order in an unfair labor practice case.

   c. Where the Authority institutes such enforcement actions, the headquarters labor relations office and M-10 should be notified promptly.

7. JUDICIAL REVIEW. Any person aggrieved by a final order of the Authority in an unfair labor practice case may within 60 days of the date on which the order was issued institute an action for judicial review of the Authority's order in the United States Court of Appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia. Management representatives may not initiate a request for judicial review of an Authority order in an unfair labor practice case without prior clearance from the headquarters labor relations office of the administration involved. The latter office will coordinate the matter with M-10 before approving such a request. The headquarters labor relations office of the administration and M-10 will be notified promptly of any union initiated requests for judicial review in unfair labor practice cases.

CHAPTER IX. TRAINING AND STATISTICAL INFORMATION

1. TRAINING.

   a. Effective implementation of the Act can only be carried out by meaningful delegation of authority to management representatives who are properly trained to handle labor-management relations. Each management official has a special responsibility to see that labor-management relations training is given to each supervisor and individual who will be dealing with employees and labor organization representatives in day-to-day relationships and in the negotiation and the administration of collective bargaining agreements. The greater the responsibility of the individuals for dealing with union representatives, the more thorough their grounding and training in labor-management relations should be.

   b. Operating Administrations must ensure that labor relations training is made available to those individuals needing such training. This training, where appropriate, should involve the rights, responsibilities and obligations of the parties under the Act; contract administration, and specialized training for management negotiators prior to their assignment to management bargaining teams.

   c. It is incumbent on management officials to ensure that their representatives in arbitration, Panel proceedings, unfair labor practices, and other matters before the Authority are fully trained and prepared to exercise their representational functions. This includes necessary coordination with appropriate OST or administration offices such as Civil Rights, General/Chief Counsel and the Office of Personnel and Training.

2. REPORTING. OST and the Operating Administrations will prepare statistical reports containing the information listed below and submit the reports to M-17 semi-annually. Reports will be submitted to M-17 by the 15th of May for the period November through April, and by the 15th of November for the period May through October. The semi-annual reports (see attachment 2) submitted to M-17 should contain the following information:

a. Exclusive Units.

(1) Number of existing exclusive units and approximate number of employees represented, showing General Schedule professional and nonprofessional, Wage Grade and Nonappropriated Fund employees separately.

(2) Number of pending units (petitions have been filed but no certifications issued by the Authority) and estimated number of employees involved.

b. Agreements.

(1) Number of agreements currently in effect and approximate number of employees covered.

(2) Number of agreements being negotiated and approximate number of employees covered.

c. Unions.

A listing by unions of:

(1) the number of units represented;

(2) unit population;

(3) number of agreements in effect;

(4) number of agreements pending; and

(5) number of employees on dues withholding.

CHAPTER X. DEALING WITH NON-LABOR GROUPS

1. SCOPE OF DEALINGS.

   a. The provisions of the Act do not preclude dealings with veterans' organizations with respect to matters of particular interest to employees with veterans preference. Similarly, agencies may engage in dealing with religious, social, fraternal, professional or other lawful associations, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members.

   b. The relationships with such organizations may not take on the character of negotiations or consultation as defined in the Act, or otherwise impact on an agency's relationships with labor organizations under the Act.

2. APPROPRIATE MATTERS FOR DISCUSSION.

   a. Examples of matters appropriate for discussion include the following:

      (1) a veteran's organization may discuss matters such as the application of provisions of the Veterans Preference Act to a particular veteran with respect to adverse actions, retention preference or the application of other legislation or regulations specifically affecting the veteran;

      (2) an agency may consult with groups representing minorities or women in connection with the agency's Equal Employment Opportunity programs and action plans;

      (3) an agency may consult with any association or organization on matters related to its mission and programs or on matters of concern to the local community and the general public; and

(4) an agency may discuss a proposed agency sponsorship or support of employee welfare, social and recreational associations or other private associations that provide services that contribute to employee welfare and morale. Such sponsorship and support include the use of facilities and space and the use of facilities for the dissemination of information about its activities or offers to employees.

b. An agency may discuss with a professional association the granting of privileges to the association where the agency has determined that such action would be beneficial to the agency's programs or would be warranted as a service to employees who are members of the association. These are merely examples of the types of matters which may be discussed with non-labor groups and are not to be considered as an all inclusive list or a limiting of the types or organizations which may bring matters to management's attention. Of paramount concern in any discussions, however, is that they do not involve grievances, personnel policies and practices, or other matters affecting the working conditions of employees or in any other way place the agency in a position where it would be vulnerable to a charge of violating the Act.

FOR THE SECRETARY OF TRANSPORTATION:

Edward W. Scott, Jr.
Assistant Secretary for
Administration

TITLE VII—FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

SEC. 701. So much of subpart F of part III of title 5, United States Code, as precedes subchapter II of chapter 71 thereof is amended to read as follows:

"Subpart F—Labor-Management and Employee Relations

"CHAPTER 71—LABOR-MANAGEMENT RELATIONS

"SUBCHAPTER I—GENERAL PROVISIONS

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

"SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

"SUBCHAPTER I—GENERAL PROVISIONS

5 USC 7101.

"§ 7101. Findings and purpose

"(a) The Congress finds that—

"(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

"(A) safeguards the public interest,

"(B) contributes to the effective conduct of public business, and

"(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

"(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

"(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

5 USC 7102.

"§ 7102. Employees' rights

"Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

"(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

"(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

5 USC 7103.

"§ 7103. Definitions; application

"(a) For the purpose of this chapter—

"(1) 'person' means an individual, labor organization, or agency;

"(2) 'employee' means an individual—

"(A) employed in an agency; or

"(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

"(i) an alien or noncitizen of the United States who occupies a position outside the United States;

"(ii) a member of the uniformed services;

"(iii) a supervisor or a management official;

"(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency; or

"(v) any person who participates in a strike in violation of section 7311 of this title; 5 USC 7311.

"(3) 'agency' means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Veterans' Administration), the Library of Congress, and the Government Printing Office, but does not include— 5 USC 2105.

"(A) the General Accounting Office;

"(B) the Federal Bureau of Investigation;

"(C) the Ceneral Intelligence Agency;

"(D) the National Security Agency;

"(E) the Tennessee Valley Authority;

"(F) the Federal Labor Relations Authority;

or

"(G) the Federal Service Impasses Panel;

"(4) 'labor organization' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

"(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

"(C) an organization sponsored by an agency; or

"(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

"(5) 'dues' means dues, fees, and assessments;

"(6) 'Authority' means the Federal Labor Relations Authority described in section 7104(a) of this title;

"(7) 'Panel' means the Federal Service Impasses Panel described in section 7119(c) of this title;

"(8) 'collective bargaining agreement' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

"(9) 'grievance' means any complaint—

"(A) by any employee concerning any matter relating to the employment of the employee;

"(B) by any labor organization concerning any matter relating to the employment of any employee; or

"(C) by any employee, labor organization, or agency concerning—

"(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

"(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

"(10) 'supervisor' means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority;

"(11) 'management official' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

"(12) 'collective bargaining' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

"(13) 'confidential employee' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

"(14) 'conditions of employment' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

5 USC 7321.

"(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

"(B) relating to the classification of any position; or

"(C) to the extent such matters are specifically provided for by Federal statute;

"(15) 'professional employee' means—

"(A) an employee engaged in the performance of work—

"(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

"(ii) requiring the consistent exercise of discretion and judgment in its performance;

"(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

"(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

"(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

"(16) 'exclusive representative' means any labor organization which—

"(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

"(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

"(i) on the basis of an election, or

"(ii) on any basis other than an election,

and continues to be so recognized in accordance with the provisions of this chapter;

"(17) 'firefighter' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

"(18) 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

"(b)(1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that— Presidential order.

"(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

"(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

"(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security. Presidential order.

5 USC 7104.

"§ 7104. Federal Labor Relations Authority

"(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

"(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

"(c)(1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

"(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

"(A) the date on which the member's successor takes office, or

"(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

"(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

Report to President.

"(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

"(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

"(2) The General Counsel may—

"(A) investigate alleged unfair labor practices under this chapter,

"(B) file and prosecute complaints under this chapter, and

"(C) exercise such other powers of the Authority as the Authority may prescribe.

"(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

5 USC 7105.

"§ 7105. Powers and duties of the Authority

"(a)(1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

"(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

"(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

"(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative

by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

"(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

"(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

"(E) resolves issues relating to the duty to bargain in good faith under section 7117(c) of this title;

"(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;

"(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title; Hearings.

"(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

"(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

"(b) The Authority shall adopt an official seal which shall be judicially noticed.

"(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

"(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary. 5 USC 3105.

"(e)(1) The Authority may delegate to any regional director its authority under this chapter—

"(A) to determine whether a group of employees is an appropriate unit;

"(B) to conduct investigations and to provide for hearings;

"(C) to determine whether a question of representation exists and to direct an election; and

"(D) to supervise or conduct secret ballot elections and certify the results thereof.

"(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

"(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may

affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

"(1) the date of the action; or

"(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

"(g) In order to carry out its functions under this chapter, the Authority may—

Hearings.

"(1) hold hearings;

Administer oaths.

"(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

"(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

"(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

"(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority.

5 USC 7106.

"§ 7106. Management rights

"(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

"(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

"(2) in accordance with applicable laws—

"(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

"(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

"(C) with respect to filling positions, to make selections for appointments from—

"(i) among properly ranked and certified candidates for promotion; or

"(ii) any other appropriate source; and

"(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

"(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

"(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

"(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

"(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

"SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

"§ 7111. Exclusive recognition of labor organizations 5 USC 7111.

"(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

"(b) If a petition is filed with the Authority— Petition.

"(1) by any person alleging—

"(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

"(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

"(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held. Hearing. Election.

"(c) A labor organization which—

"(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

"(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

"(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

"(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing empoyees eligible to vote the opportunity to choose—

"(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

"(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

"(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

"(f) Exclusive recognition shall not be accorded to a labor organization—

"(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

"(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

"(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

"(A) the collective bargaining agreement has been in effect for more than 3 years, or

"(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

"(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

"(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

5 USC 7112.

"§ 7112. Determination of appropriate units for labor organization representation

"(a)(1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency involved.

"(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

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"(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;

"(2) a confidential employee;

"(3) an employee engaged in personnel work in other than a purely clerical capacity;

"(4) an employee engaged in administering the provisions of this chapter;

"(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

"(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

"(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

"(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

"(1) which represents other individuals to whom such provision applies; or

"(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

"(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

"§ 7113. National consultation rights 5 USC 7113.

"(a)(1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

"(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) be permitted reasonable time to present its views and recommendations regarding the changes.

"(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

5 USC 7114.

"§ 7114. Representation rights and duties

"(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

"(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

"(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

"(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if—

"(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

"(ii) the employee requests representation.

"(3) Each agency shall annually inform its employees of their rights under paragraph (2)(B) of this subsection.

"(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

"(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—

"(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

"(B) exercising grievance or appellate rights established by law, rule, or regulation;

except in the case of grievance or appeal procedures negotiated under this chapter.

"(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

"(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

"(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

"(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

"(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

"(A) which is normally maintained by the agency in the regular course of business;

"(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

"(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

"(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

"(c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

"(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

"(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

"(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

"§ 7115. Allotments to representatives 5 USC 7115.

"(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

"(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

"(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

"(2) the employee is suspended or expelled from membership in the exclusive representative.

"(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

"(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

"(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

5 USC 7116.

"§ 7116. Unfair labor practices

"(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

"(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

"(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

"(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

Ante, p. 1114.

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

"(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

"(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

"(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

"(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

"(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

"(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

"(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

"(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

"(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

"(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with an agency's operations being considered as an unfair labor practice.

"(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

"(1) to meet reasonable occupational standards uniformly required for admission, or

"(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

"(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121 (e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

"(e) The expression of any personal view, argument, opinion or the making of any statement which—

"(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

"(2) corrects the record with respect to any false or misleading statement made by any person, or

"(3) informs employees of the Government's policy relating to labor-management relations and representation,

shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

"§ 7117. Duty to bargain in good faith; compelling need; duty to consult 5 USC 7117.

"(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

"(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Goverment-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

"(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

"(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

"(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

"(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

"(B) the Authority determines that a compelling need for a rule or regulation does not exist.

Hearing. "(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

"(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

"(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

Appeal. "(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

"(A) filing a petition with the Authority; and

"(B) furnishing a copy of the petition to the head of the agency.

Petition. "(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall—

"(A) file with the Authority a statement—

"(i) withdrawing the allegation; or

"(ii) setting forth in full its reasons supporting the allegation; and

"(B) furnish a copy of such statement to the exclusive representative.

"(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

"(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

"(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

"(d)(1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation

rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

"(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

"(A) be informed of any substantive change in conditions of employment proposed by the agency, and

"(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

"(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

"(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

"(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

"§ 7118. Prevention of unfair labor practices 5 USC 7118.

"(a)(1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

"(2) Any complaint under paragraph (1) of this subsection shall contain a notice— Complaint.

"(A) of the charge;

"(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and Hearing.

"(C) of the time and place fixed for the hearing.

"(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

"(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

"(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

"(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

"(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

"(5) The General Counsel may prescribe regulations providing for Regulations.

informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

Hearing.

"(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

5 USC 551.

Transcript.

"(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

"(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

"(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

"(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

"(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

"(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

Rules and regulations, interpretation.

"(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

5 USC 7119.

"§ 7119. Negotiation impasses; Federal Service Impasses Panel

"(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

"(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

"(1) either party may request the Federal Service Impasses Panel to consider the matter, or

"(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

"(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

"(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations. Membership.

"(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

"(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

"(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and and shall either— Investigation.

"(i) recommend to the parties procedures for the resolution of the impasse; or

"(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

"(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

"(i) hold hearings;

"(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

"(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

"(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

5 USC 7120.

"§ 7120. Standards of conduct for labor organizations

"(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

"(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

"(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

"(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

"(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

"(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

"(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

"(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

Filing of reports.

"(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

Regulations.

"(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

"(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential

employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

"(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation— Strike.

"(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

"(2) take any other appropriate disciplinary action.

"SUBCHAPTER III—GRIEVANCES

"§ 7121. Grievance procedures 5 USC 7121.

"(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d) and (e) of this section, the procedures shall be the exclusive procedures for resolving grievances which fall within its coverage.

"(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

"(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

"(1) be fair and simple,

"(2) provide for expeditious processing, and

"(3) include procedures that—

"(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

"(B) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

"(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

"(c) The preceding subsections of this section shall not apply with respect to any grievance concerning—

"(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities); 5 USC 7321.

"(2) retirement, life insurance, or health insurance;

"(3) a suspension or removal under section 7532 of this title;

"(4) any examination, certification, or appointment; or

"(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

"(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option *Ante*, p. 1114.

under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

Ante, p. 1140.

"(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

Ante, p. 1133, 1136.

Ante, p. 1138.

"(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

"(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

Ante, p. 1143.

5 USC 7122.

"§ 7122. Exceptions to arbitral awards

"(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient—

"(1) because it is contrary to any law, rule, or regulation; or

"(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

"(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

"§ 7123. Judicial review; enforcement 5 USC 7123.

"(a) Any person aggrieved by any final order of the Authority other than an order under—

"(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

"(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

"(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order. Petition.

"(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged 5 USC 706. before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole,

shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

"(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

"SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

5 USC 7131.

"§ 7131. Official time

"(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

"(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

"(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

"(d) Except as provided in the preceding subsections of this section—

"(1) any employee representing an exclusive representative, or

"(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

5 USC 7132.

"§ 7132. Subpenas

"(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

5 USC 3105.

"(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

"(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

"(b) In the case of contumacy or failure to obey a subpena issued under subsection (a) (1) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(c) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

"§ 7133. Compilation and publication of data 5 USC 7133.

"(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

"(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title. 5 USC 552, 552a.

"§ 7134. Regulations 5 USC 7134.

"The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

"§ 7135. Continuation of existing laws, recognitions, agreements, and procedures 5 USC 7135.

"(a) Nothing contained in this chapter shall preclude—

"(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

"(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

"(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions 5 USC 7301 note, 7701 note.

of this chapter or by regulations or decisions issued pursuant to this chapter.".

BACKPAY IN CASE OF UNFAIR LABOR PRACTICES AND GRIEVANCES

SEC. 702. Section 5596(b) of title 5, United States Code is amended to read as follows:

"(b)(1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

"(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

"(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

"(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7701(g) of this title; and

Ante, p. 1191.

Ante, p. 1138.

"(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

"(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

"(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

5 USC 5551, 5552.

"(2) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

"(3) For the purpose of this subsection, 'grievance' and 'collective bargaining agreement' have the meanings set forth in section 7103 of this title, 'unfair labor practice' means an unfair labor practice described in section 7116 of this title, and 'personnel action' includes the omission or failure to take an action or confer a benefit.".

Ante, p. 1192.

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 703. (a) Subchapter II of chapter 71 of title 5, United States Code, is amended—

(1) by redesignating sections 7151 (as amended by section 310 of this Act), 7152, 7153, and 7154 as sections 7201, 7202, 7203, and 7204, respectively;

5 USC 7152-7154, 7201-7204.

(2) by striking out the subchapter heading and inserting in lieu thereof the following:

"CHAPTER 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

"SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

and

(3) by adding at the end thereof the following new subchapter:

"SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

"§ 7211. Employees' right to petition Congress 5 USC 7211.

"The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.".

(b) The analysis for part III of title 5, United States Code, is amended by striking out—

"Subpart F—Employee Relations

"71. Policies ..... 7101";

and inserting in lieu thereof—

"Subpart F—Labor-Management and Employee Relations

"71. Labor-Management Relations 7101
"72. Antidiscrimination; Right to Petition Congress ..... 7201".

(c) (1) Section 2105 (c) (1) of title 5, United States Code, is amended by striking out "7152, 7153" and inserting in lieu thereof "7202, 7203".

(2) Section 3302(2) of title 5, United States Code, is amended by striking out "and 7154" and inserting in lieu thereof "and 7204".

(3) Sections 4540(c), 7212(a), and 9540(c) of title 10, United States Code, are each amended by striking out "7154 of title 5" and inserting in lieu thereof "7204 of title 5".

(4) Section 410(b)(1) of title 39, United States Code, is amended by striking out "chapters 71 (employee policies)" and inserting in lieu thereof the following: "chapters 72 (antidiscrimination; right to petition Congress)".

(5) Section 1002(g) of title 39, United States Code, is amended by striking out "section 7102 of title 5" and inserting in lieu thereof "section 7211 of title 5".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following clause:

"(124) Chairman, Federal Labor Relations Authority.".

(e) Section 5316 of such title is amended by adding at the end thereof the following clause: 5 USC 5316.

"(145) Members, Federal Labor Relations Authority (2) and its General Counsel.".

MISCELLANEOUS PROVISIONS

5 USC 5343 note.

SEC. 704. (a) Those terms and conditions of employment and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92-392 applies which were the subject of negotiation in accordance with prevailing rates and practices prior to August 19, 1972, shall be negotiated on and after the date of the enactment of this Act in accordance with the provisions of section 9(b) of Public Law 92-392 without regard to any provision of chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph.

5 USC 5343 note.

Ante, p. 1191.

(b) The pay and pay practices relating to employees referred to in paragraph (1) of this subsection shall be negotiated in accordance with prevailing rates and pay practices without regard to any provision of—

(A) chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph;

(B) subchapter IV of chapter 53 and subchapter V of chapter 55 of title 5, United States Code; or

5 USC 5301, 5501.

(C) any rule, regulation, decision, or order relating to rates of pay or pay practices under subchapter IV of chapter 53 or subchapter V of chapter 55 of title 5, United States Code.

Attachment 2

SUGGESTED FORMAT FOR REPORTING LMR STATISTICAL INFORMATION

Organization: _____

Period: _____

1. Units

Number of Units	Number of Employees Represented				
	Total	GS	Wage	NAF	Professional
Existing					
Pending					

2. Agreements

	Number	Employees Covered
Existing		
Pending		

3. Unions

Union Name	Number of Units	Unit Population	Number of Agreements in Effect	Number of Agreements Pending	Number of Employees on Dues Withholding

SUMMARY OF LABOR RELATIONS COORDINATION/NOTIFICATION REQUIREMENTS

ISSUE	REQUIREMENT	LOCATION IN DOT ORDER-PAGE
Arbitration		
Copies of Awards	Copy to M-10/OPM	13
Impasse Issues	Notification to M-10	12
Management Exceptions	M-10 Approval/Submission to FLRA	11, 45
Union Exceptions	Copy to M-10	45
Attorney Fee Awards	Copy to M-10/Coordination with Administration	13, 44
Compelling Need Issues		
Agency Position to FLRA	M-10 Approval/ Submission to FLRA	11
Local Management Decision	Notification to M-10	12
Consolidation of Units		
Across Administrations	M-10 Approval	11, 27
Within Administrations	Notification to Administration	27
Consultation Rights		
Government-wide Regulations	Notification to M-10	12
National Consultation Rights (Denial-Termination)	M-10 Approval	11, 23
Election Results	Notification to M-10	13
Enforcement of FLRA Order	Notification to M-10/ Administration	12, 54
Exceptions to Agency Regulations	M-1 Approval	11
Implementing Directives	Copy to M-10	13
Judicial Review		
Management Initiated	M-10 Approval	12, 46, 54
Union Initiated	Notification to M-10/ Administration	54

ISSUE	REQUIREMENT	LOCATION IN DOT ORDER-PAGE
Negotiated Agreements	Copy to M-17/OPM	40
Negotiation/Permissive Areas	Notification to Administration	40
Negotiability Disputes		
Agency Position to FLRA	M-10 Approval/Submission to FLRA	11, 37
Local Agency Determination	Notification to M-10	12, 38
Petition to Amend FLRA Regulations	M-10 Approval/Submission	11
Picketing	Telephone/Written Notification to M-10	12
Policy Statement by FLRA	M-10 Approval/Submission	11
Representation Matters		
Certifications	Copy to M-10	13
Election Results	Copy to M-10/Administration	13, 24, 28
Hearing Notices	Copy to M-10/Administration	24, 27, 28
Management Initiated RA	M-10 Approval	11, 25
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Petitions to FLRA	Copy to M-10	13, 25
Union Initiated Review of Regional Director Decision	Notification to M-10	12
Request for Panel Assistance	Notification to M-10/ Administration	12, 35
Request for Guidance from OPM, GAO, FLRA, FSIP or FMCS	Notification to M-10	13
Standards of Conduct	Copy to M-10/Administration	13, 19
Statistical Reports	To M-10	55

ISSUE DOT ORDER-PAGE	REQUIREMENT	LOCATION IN
Strike-Work Stoppages	Telephone/Written Notification to M-10	12
Subpoenas	Notification to M-10	12
Unfair Labor Practices		
Agency Response	Copy to M-10/Administration	51
ALJ Decision	Notification to M-10/ Administration	52
Complaints, Decisions and Settlements	Copy to M-10/Administration	13, 50, 51
FLRA Decision	Copy to M-10/Administration	52
Management Initiated ULP	M-10 Approval	12, 20
Temporary Relief/ Restraining Orders	Notification to M-10/ Administrations	54

SUBJECT MATTER INDEX
FOR USE WITH
DOT ORDER 3710

The following index is keyed to the appropriate page number(s) on which the subject matter appears. Cross reference to the appropriate subject matter in the Federal Service Labor-Management Relations Act can be accomplished by use of the subject matter index in Attachment 1.

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DEPARTMENTAL PERSONNEL MANUAL SYSTEM

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Retain until superseded

DPM LETTER NO. 711-1

DATE: NOV 10 1981

SUBJECT: Recording the Use of Official Time by Union and Other Employee Representatives for Representational Functions

The attached advance copy of Federal Personnel Manual (FPM) Letter 711-161, Recording the Use of Official Time by Union and Other Employee Representatives for Representational Functions, dated July 31, 1981 (Attachment 1), revises the requirements for all Federal agencies to follow in establishing a system for recording and maintaining records of official time and costs granted to employees for representational functions. This Departmental Personnel Manual Letter supersedes Department of Transportation Order 3720.1, Policies and Procedures for Recording Official Time for Representational Functions, dated May 9, 1978.

The amount of official time granted to employees for representational purposes must be arrived at through a balancing of three factors: (1) the impact of the time away from the job on employee performance and efficiency; (2) the impact of time away from the job on the effective conduct of the Government's business; and (3) the right of employees to be represented in matters relating to their employment. While no fixed or Government-wide allowance is established, Departmental elements must ensure that the official time authorized employees for representational purposes does not exceed that which is necessary for the appropriate performance of those functions. Representational functions may not be permitted to unduly interfere with the accomplishment of the employee-representative's official job responsibilities. All official time granted to employees to perform representational functions must be recorded and such records maintained for a minimum period of three years. These provisions apply only to employees serving as representatives and not to the employees being represented.

Filing Instructions: File after FPM Chapter 711 Letters

Distribution: To All FPM Subscribers, Headquarters and Field

Each Administration, including the Office of the Secretary, must develop and implement a system(s) for granting and recording the use of official time for representational purposes. Because of the varying organization and work force size of the different elements of the Department, the management officials authorized to grant official time for representational purposes and the specific organizational locations where records of use of official time are to be maintained are for determination by each Administration. However, procedures established should ensure that records of official time used for representational purposes are provided to a central management point, usually the servicing personnel office, whenever a compilation of official time usage is required by the Department or other government agency and at least annually for a review to ensure that the amount of official time used is in accordance with the above stated criteria.

No recurring reporting procedure outside of the Administration is established. However, each Departmental element should be aware that they are held accountable for the use of official time and funds. The Office of Personnel Management, the General Accounting Office, and other appropriate government agencies will be monitoring the implementation and administration of this program and records kept as required herein are subject to review by those agencies.

Any system developed must record, as a minimum, official time usage in the five categories listed in FPM Letter 711-161. Attachment 2 is an official time usage record form which may be adopted for that purpose. Whether the attached form is adopted or a different recording system is developed, all obligations to negotiate or consult, as appropriate, with recognized labor organizations must be met prior to implementing or modifying a system for granting and recording the use of official time for representational purposes.

Director, Office of Personnel
and Training

2 Attachments

EMPLOYEE REPRESENTATION RECORD[1]

Name of Employee: _____ Hourly Rate: _____

Location of Employee: _____ DOT Element/Location: _____

Name/Title of Supervisor: _____ Record for Calendar Year: _____

DATE OFFICIAL TIME USED	AMOUNT OF TIME (HOURS) OR ACTUAL TDY COSTS	CATEGORY OF[2] OFFICIAL TIME	NATURE OF REPRESENTATIONAL DUTIES PERFORMED (e.g. Participate in monthly safety meeting)

1. Supervisors should maintain this record on a continuing basis for each employee granted official time for representational duties. This record should be retained for a minimum period of three years. The employee identified above is entitled to review this record.

2. Categories of official time will be recorded as:

   IA: Basic, Renegotiation or Reopener Negotiations
   IB: Midterm Negotiations
   II: On-Going Labor-Management Relationship
   III: Grievances and Appeals
   IV: Travel and Per Diem

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Encl. (3) to COMDTINST M12711.1